

AMENDED IN ASSEMBLY JULY 3, 2014

AMENDED IN SENATE MAY 21, 2014

AMENDED IN SENATE APRIL 29, 2014

AMENDED IN SENATE APRIL 10, 2014

## **SENATE BILL**

**No. 1197**

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**Introduced by Senator Pavley**

February 20, 2014

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An act to amend Sections 1203c and 3453 of, and to add Section 2085.6 to, the Penal Code, and to amend Section 19280 of the Revenue and Taxation Code, relating to restitution.

### LEGISLATIVE COUNSEL'S DIGEST

SB 1197, as amended, Pavley. Restitution: collection by counties.

Existing law requires that restitution fines and fees be imposed upon a person convicted of crime. Under existing law, when a person is committed to an institution under the jurisdiction of the Department of Corrections and Rehabilitation and the court has ordered restitution, the probation officer or the district attorney, with the consent of the victim, is authorized to send the victim's contact information and a copy of the restitution order to the department for the sole purpose of distributing the restitution collected on behalf of the victim.

This bill, when a person who has been ordered to pay restitution is committed to a county jail or placed on postrelease community supervision or mandatory supervision, would authorize the probation officer or district attorney to provide the victim's contact information and a copy of the restitution order, with the victim's consent, to the county agency designated by the board of supervisors to collect and

distribute restitution for the sole purpose of distributing the restitution collected on behalf of the victim.

Existing law makes any portion of a restitution fine or restitution fee that remains unsatisfied after a defendant is no longer on probation, parole, postrelease community supervision or mandatory supervision, or completed diversion, enforceable by the California Victim Compensation and Government Claims Board, as specified. Existing law requires the Secretary of the Department of Corrections and Rehabilitation to collect restitution fines and fees from inmates and authorizes the collection of those fines and fees from inmates in county jails by an agency designated by the county board of supervisors. Existing law authorizes the secretary, the local agency designated by the county board of supervisors, or, under specified circumstances, a local collection program to collect restitution fines and fees from parolees. Existing law authorizes the secretary and the local agency to deduct and retain administrative fees for fines collected from parolees.

This bill would authorize the collection of restitution fines or restitution orders, in a manner to be established by the county board of supervisors, by the department or county agency designated by the board from a person who has been released from a state prison or county jail and is subject to postrelease community supervision or mandatory supervision, as specified. The bill would authorize a county board of supervisors to impose a fee upon the individual subject to postrelease community supervision or mandatory supervision to cover the actual administrative cost of collecting the restitution fine and the restitution order, not to exceed 10% of the amount collected, to be deposited in the county's general fund. The bill would require a county that elects to collect restitution fines and restitution orders pursuant to these provisions to coordinate efforts with the Franchise Tax Board, as specified.

Existing law requires that persons released from prison be subject either to parole for a specified period of time or to postrelease community supervision for a period not exceeding 3 years. Existing law specifies the conditions of postrelease community supervision.

This bill would require, as a condition of postrelease community supervision, that the person pay court-ordered restitution and restitution fines in the same manner as a person placed on probation.

*This bill would, contingent upon the enactment of SB 419 of the 2013–14 Regular Session, incorporate additional conforming changes.*

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 1203c of the Penal Code is amended to  
2 read:

3     1203c. (a) (1) Notwithstanding any other law, whenever a  
4 person is committed to an institution under the jurisdiction of the  
5 Department of Corrections and Rehabilitation, whether probation  
6 has been applied for or not, or granted and revoked, it shall be the  
7 duty of the probation officer of the county from which the person  
8 is committed to send to the Department of Corrections and  
9 Rehabilitation a report of the circumstances surrounding the offense  
10 and the prior record and history of the defendant, as may be  
11 required by the Secretary of the Department of Corrections and  
12 Rehabilitation.

13     (2) If the person is being committed to the jurisdiction of the  
14 department for a conviction of an offense that requires him or her  
15 to register as a sex offender pursuant to Section 290, the probation  
16 officer shall include in the report the results of the State-Authorized  
17 Risk Assessment Tool for Sex Offenders (SARATSO) administered  
18 pursuant to Sections 290.04 to 290.06, inclusive, if applicable.

19     (b) These reports shall accompany the commitment papers. The  
20 reports shall be prepared in the form prescribed by the administrator  
21 following consultation with the Board of State and Community  
22 Corrections, except that if the defendant is ineligible for probation,  
23 a report of the circumstances surrounding the offense and the prior  
24 record and history of the defendant, prepared by the probation  
25 officer on request of the court and filed with the court before  
26 sentence, shall be deemed to meet the requirements of paragraph  
27 (1) of subdivision (a).

28     (c) In order to allow the probation officer an opportunity to  
29 interview, for the purpose of preparation of these reports, the  
30 defendant shall be held in the county jail for 48 hours, excluding  
31 Saturdays, Sundays, and holidays, subsequent to imposition of  
32 sentence and prior to delivery to the custody of the Secretary of  
33 the Department of Corrections and Rehabilitation, unless the  
34 probation officer has indicated the need for a different period of  
35 time.

(d) Whenever a person is committed to an institution under the jurisdiction of the Department of Corrections and Rehabilitation or a county jail pursuant to subdivision (h) of Section 1170, or is placed on postrelease community supervision or mandatory supervision, and the court has ordered the person to pay restitution to a victim, the following shall apply:

(1) If the victim consents, the probation officer of the county from which the person is committed may send the victim's contact information and a copy of the restitution order to the department or to the county agency designated by the board of supervisors to collect and distribute restitution for the sole purpose of distributing the restitution collected on behalf of the victim.

(2) Notwithstanding paragraph (1), the district attorney of the county from which the person is committed may send the victim's contact information and a copy of the restitution order to the department or to the county agency designated by the board of supervisors to collect and distribute restitution for the sole purpose of distributing the restitution collected on behalf of the victim if the district attorney finds it is in the best interest of the victim to send that information. If the victim affirmatively objects, the district attorney shall not send the victim's contact information. The district attorney shall not be required to inform the victim of the right to object.

(3) The victim's contact information shall remain confidential and shall not be made part of the court file or combined with any public document.

SEC. 2. Section 2085.6 is added to the Penal Code, to read:

2085.6. (a) When a prisoner owes a restitution fine, or any portion thereof, is subsequently released from the custody of the Department of Corrections and Rehabilitation or a county jail facility, and is subject to postrelease community supervision under Section 3451 or mandatory supervision under subdivision (h) of Section 1170, the person shall have a continuing obligation to pay the restitution fine in full. The restitution fine obligation and any portion left unsatisfied upon placement in postrelease community supervision or mandatory supervision is enforceable and may be collected, in a manner to be established by the county board of supervisors, by the department or county agency designated by the board of supervisors in the county where the prisoner is released. If a county elects to collect restitution fines, the

1 department or county agency designated by the county board of  
2 supervisors shall transfer that amount to the California Victim  
3 Compensation and Government Claims Board for deposit in the  
4 Restitution Fund in the State Treasury.

5 (b) When a prisoner owes payment for a restitution order, or  
6 any portion thereof, is released from the custody of the Department  
7 of Corrections and Rehabilitation or a county jail facility, and is  
8 subject to postrelease community supervision under Section 3451  
9 or mandatory supervision under subdivision (h) of Section 1170,  
10 the person shall have a continuing obligation to pay the restitution  
11 order in full. The restitution order obligation and any portion left  
12 unsatisfied upon placement in postrelease community supervision  
13 or mandatory supervision is enforceable and may be collected, in  
14 a manner to be established by the county board of supervisors, by  
15 the agency designated by the county board of supervisors in the  
16 county where the prisoner is released. If the county elects to collect  
17 the restitution order, the agency designated by the county board  
18 of supervisors for collection shall transfer the collected amount to  
19 the California Victim Compensation and Government Claims  
20 Board for deposit in the Restitution Fund in the State Treasury or  
21 may pay the victim directly. The sentencing court shall be provided  
22 a record of payments made to the victim and of the payments  
23 deposited into the Restitution Fund.

24 (c) Any portion of a restitution order or restitution fine that  
25 remains unsatisfied after an individual is released from postrelease  
26 community supervision or mandatory supervision shall continue  
27 to be enforceable by a victim pursuant to Section 1214 until the  
28 obligation is satisfied.

29 (d) At its discretion, a county board of supervisors may impose  
30 a fee upon the individual subject to postrelease community  
31 supervision or mandatory supervision to cover the actual  
32 administrative cost of collecting the restitution fine and the  
33 restitution order, not to exceed 10 percent of the amount collected,  
34 the proceeds of which shall be deposited into the general fund of  
35 the county.

36 (e) If a county elects to collect both a restitution fine and a  
37 restitution order, the amount owed on the restitution order shall  
38 be collected before the restitution fine.

39 (f) If a county elects to collect restitution fines and restitution  
40 orders pursuant to this section, the county shall coordinate efforts

1 with the Franchise Tax Board pursuant to Section 19280 of the  
2 Revenue and Taxation Code.

3 (g) Pursuant to Section 1214, the county agency selected by a  
4 county board of supervisors to collect restitution fines and  
5 restitution orders may collect restitution fines and restitution orders  
6 after a person is no longer on postrelease community supervision  
7 or mandatory supervision.

8 ~~(g)~~

9 (h) For purposes of this section, the following definitions shall  
10 apply:

11 (1) "Restitution fine" means a fine imposed pursuant to  
12 subdivision (a) of Section 13967 of the Government Code, as  
13 operative prior to September 28, 1994, subdivision (b) of Section  
14 730.6 of the Welfare and Institutions Code, or subdivision (b) of  
15 Section 1202.4.

16 (2) "Restitution order" means an order for restitution to the  
17 victim of a crime imposed pursuant to subdivision (c) of Section  
18 13967 of the Government Code, as operative prior to September  
19 29, 1994, subdivision (h) of Section 730.6 of the Welfare and  
20 Institutions Code, or subdivision (f) of Section 1202.4.

21 SEC. 2.5. Section 2085.6 is added to the Penal Code, to read:

22 2085.6. (a) When a prisoner owes a restitution fine, or any  
23 portion thereof, is subsequently released from the custody of the  
24 Department of Corrections and Rehabilitation or a county jail  
25 facility, and is subject to postrelease community supervision under  
26 Section 3451 or mandatory supervision under subdivision (h) of  
27 Section 1170, the person shall have a continuing obligation to pay  
28 the restitution fine in full. The restitution fine obligation and any  
29 portion left unsatisfied upon placement in postrelease community  
30 supervision or mandatory supervision is enforceable and may be  
31 collected, in a manner to be established by the county board of  
32 supervisors, by the department or county agency designated by  
33 the board of supervisors in the county where the prisoner is  
34 released. If a county elects to collect restitution fines, the  
35 department or county agency designated by the county board of  
36 supervisors shall transfer that amount to the California Victim  
37 Compensation and Government Claims Board for deposit in the  
38 Restitution Fund in the State Treasury.

39 (b) When a prisoner owes payment for a restitution order, or  
40 any portion thereof, is released from the custody of the Department

1 of Corrections and Rehabilitation or a county jail facility, and is  
2 subject to postrelease community supervision under Section 3451  
3 or mandatory supervision under subdivision (h) of Section 1170,  
4 the person shall have a continuing obligation to pay the restitution  
5 order in full. The restitution order obligation and any portion left  
6 unsatisfied upon placement in postrelease community supervision  
7 or mandatory supervision is enforceable and may be collected, in  
8 a manner to be established by the county board of supervisors, by  
9 the agency designated by the county board of supervisors in the  
10 county where the prisoner is released. If the county elects to collect  
11 the restitution order, the agency designated by the county board  
12 of supervisors for collection shall transfer the collected amount  
13 to the California Victim Compensation and Government Claims  
14 Board for deposit in the Restitution Fund in the State Treasury or  
15 may pay the victim directly. The sentencing court shall be provided  
16 a record of payments made to the victim and of the payments  
17 deposited into the Restitution Fund.

18 (c) Any portion of a restitution order or restitution fine that  
19 remains unsatisfied after an individual is released from postrelease  
20 community supervision or mandatory supervision shall continue  
21 to be enforceable by a victim pursuant to Section 1214 until the  
22 obligation is satisfied.

23 (d) At its discretion, a county board of supervisors may impose  
24 a fee upon the individual subject to postrelease community  
25 supervision or mandatory supervision to cover the actual  
26 administrative cost of collecting the restitution fine and the  
27 restitution order, not to exceed 10 percent of the amount collected,  
28 the proceeds of which shall be deposited into the general fund of  
29 the county.

30 (e) If a county elects to collect both a restitution fine and a  
31 restitution order, the amount owed on the restitution order shall  
32 be collected before the restitution fine.

33 (f) If a county elects to collect restitution fines and restitution  
34 orders pursuant to this section, the county shall coordinate efforts  
35 with the Franchise Tax Board pursuant to Section 19280 of the  
36 Revenue and Taxation Code.

37 (g) Pursuant to Section 1214, the county agency selected by a  
38 county board of supervisors to collect restitution fines and  
39 restitution orders may collect restitution fines and restitution orders  
40 after a person is no longer on postrelease community supervision

1 or mandatory supervision or after a term in custody pursuant to  
2 subparagraph (A) of paragraph (5) of subdivision (h) of Section  
3 1170.

4 (h) For purposes of this section, the following definitions shall  
5 apply:

6 (1) “Restitution fine” means a fine imposed pursuant to  
7 subdivision (a) of Section 13967 of the Government Code, as  
8 operative prior to September 28, 1994, subdivision (b) of Section  
9 730.6 of the Welfare and Institutions Code, or subdivision (b) of  
10 Section 1202.4.

11 (2) “Restitution order” means an order for restitution to the  
12 victim of a crime imposed pursuant to subdivision (c) of Section  
13 13967 of the Government Code, as operative prior to September  
14 29, 1994, subdivision (h) of Section 730.6 of the Welfare and  
15 Institutions Code, or subdivision (f) of Section 1202.4.

16 SEC. 3. Section 3453 of the Penal Code is amended to read:

17 3453. Postrelease community supervision shall include the  
18 following conditions:

19 (a) The person shall be informed of the conditions of release.

20 (b) The person shall obey all laws.

21 (c) The person shall report to the supervising county agency  
22 within two working days of release from custody.

23 (d) The person shall follow the directives and instructions of  
24 the supervising county agency.

25 (e) The person shall report to the supervising county agency as  
26 directed by that agency.

27 (f) The person, and his or her residence and possessions, shall  
28 be subject to search at any time of the day or night, with or without  
29 a warrant, by an agent of the supervising county agency or by a  
30 peace officer.

31 (g) The person shall waive extradition if found outside the state.

32 (h) The person shall inform the supervising county agency of  
33 the person’s place of residence, employment, education, or training.

34 (i) (1) The person shall inform the supervising county agency  
35 of any pending or anticipated changes in residence, employment,  
36 education, or training.

37 (2) If the person enters into new employment, he or she shall  
38 inform the supervising county agency of the new employment  
39 within three business days of that entry.



1 (j) The person shall immediately inform the supervising county  
2 agency if he or she is arrested or receives a citation.

3 (k) The person shall obtain the permission of the supervising  
4 county agency to travel more than 50 miles from the person's place  
5 of residence.

6 (l) The person shall obtain a travel pass from the supervising  
7 county agency before he or she may leave the county or state for  
8 more than two days.

9 (m) The person shall not be in the presence of a firearm or  
10 ammunition, or any item that appears to be a firearm or  
11 ammunition.

12 (n) The person shall not possess, use, or have access to any  
13 weapon listed in Section 16140, subdivision (c) of Section 16170,  
14 Section 16220, 16260, 16320, 16330, or 16340, subdivision (b)  
15 of Section 16460, Section 16470, subdivision (f) of Section 16520,  
16 or Section 16570, 16740, 16760, 16830, 16920, 16930, 16940,  
17 17090, 17125, 17160, 17170, 17180, 17190, 17200, 17270, 17280,  
18 17330, 17350, 17360, 17700, 17705, 17710, 17715, 17720, 17725,  
19 17730, 17735, 17740, 17745, 19100, 19200, 19205, 20200, 20310,  
20 20410, 20510, 20610, 20611, 20710, 20910, 21110, 21310, 21810,  
21 22010, 22015, 22210, 22215, 22410, 24310, 24410, 24510, 24610,  
22 24680, 24710, 30210, 30215, 31500, 32310, 32400, 32405, 32410,  
23 32415, 32420, 32425, 32430 32435, 32440, 32445, 32450, 32900,  
24 33215, 33220, 33225, or 33600.

25 (o) (1) Except as provided in paragraph (2) and subdivision  
26 (p), the person shall not possess a knife with a blade longer than  
27 two inches.

28 (2) The person may possess a kitchen knife with a blade longer  
29 than two inches if the knife is used and kept only in the kitchen of  
30 the person's residence.

31 (p) The person may use a knife with a blade longer than two  
32 inches, if the use is required for that person's employment, the use  
33 has been approved in a document issued by the supervising county  
34 agency, and the person possesses the document of approval at all  
35 times and makes it available for inspection.

36 (q) The person shall waive any right to a court hearing prior to  
37 the imposition of a period of "flash incarceration" in a city or  
38 county jail of not more than 10 consecutive days for any violation  
39 of his or her postrelease supervision conditions.

1 (r) The person shall participate in rehabilitation programming  
2 as recommended by the supervising county agency.

3 (s) The person shall be subject to arrest with or without a warrant  
4 by a peace officer employed by the supervising county agency or,  
5 at the direction of the supervising county agency, by any peace  
6 officer when there is probable cause to believe the person has  
7 violated the terms and conditions of his or her release.

8 (t) The person shall pay court-ordered restitution and restitution  
9 fines in the same manner as a person placed on probation.

10 SEC. 4. Section 19280 of the Revenue and Taxation Code is  
11 amended to read:

12 19280. (a) (1) Fines, state or local penalties, bail, forfeitures,  
13 restitution fines, restitution orders, or any other amounts imposed  
14 by a juvenile or superior court of the State of California upon a  
15 person or any other entity that are due and payable in an amount  
16 totaling no less than one hundred dollars (\$100), in the aggregate,  
17 for criminal offenses, including all offenses involving a violation  
18 of the Vehicle Code, and any amounts due pursuant to Section  
19 903.1 of the Welfare and Institutions Code may, no sooner than  
20 90 days after payment of that amount becomes delinquent, be  
21 referred by the juvenile or superior court, the county, or the state  
22 to the Franchise Tax Board for collection under guidelines  
23 prescribed by the Franchise Tax Board. Unless the victim of the  
24 crime notifies the Department of Corrections and Rehabilitation  
25 or county to the contrary, the Department of Corrections and  
26 Rehabilitation or county may refer a restitution order to the  
27 Franchise Tax Board, in accordance with subparagraph (B) of  
28 paragraph (2), for any person subject to the restitution order who  
29 is or has been under the jurisdiction of the Department of  
30 Corrections and Rehabilitation or county.

31 (2) For purposes of this subdivision:

32 (A) The amounts referred by the juvenile or superior court, the  
33 county, or the state under this section may include an administrative  
34 fee and any amounts that a government entity may add to the  
35 court-imposed obligation as a result of the underlying offense,  
36 trial, or conviction. For purposes of this article, those amounts  
37 shall be deemed to be imposed by the court.

38 (B) Restitution orders may be referred to the Franchise Tax  
39 Board only by a government entity, as agreed upon by the  
40 Franchise Tax Board, provided that all of the following apply:

1 (i) The government entity has the authority to collect on behalf  
2 of the state or the victim.

3 (ii) The government entity shall be responsible for distributing  
4 the restitution order collections, as appropriate.

5 (iii) The government entity shall ensure, in making the referrals  
6 and distributions, that it coordinates with any other related  
7 collection activities that may occur by superior courts, counties,  
8 or other state agencies.

9 (iv) The government entity shall ensure compliance with laws  
10 relating to the reimbursement of the State Restitution Fund.

11 (C) The Franchise Tax Board shall establish criteria for referral  
12 that shall include setting forth a minimum dollar amount subject  
13 to referral and collection.

14 (b) The Franchise Tax Board, in conjunction with the Judicial  
15 Council, shall seek whatever additional resources are needed to  
16 accept referrals from all 58 counties or superior courts.

17 (c) Upon written notice to the debtor from the Franchise Tax  
18 Board, any amount referred to the Franchise Tax Board under  
19 subdivision (a) and any interest thereon, including any interest on  
20 the amount referred under subdivision (a) that accrued prior to the  
21 date of referral, shall be treated as final and due and payable to the  
22 State of California, and shall be collected from the debtor by the  
23 Franchise Tax Board in any manner authorized under the law for  
24 collection of a delinquent personal income tax liability, including,  
25 but not limited to, issuance of an order and levy under Article 4  
26 (commencing with Section 706.070) of Chapter 5 of Division 2  
27 of Title 9 of Part 2 of the Code of Civil Procedure in the manner  
28 provided for earnings withholding orders for taxes.

29 (d) (1) Part 10 (commencing with Section 17001), this part,  
30 Part 10.7 (commencing with Section 21001), and Part 11  
31 (commencing with Section 23001) shall apply to amounts referred  
32 under this article in the same manner and with the same force and  
33 effect and to the full extent as if the language of those laws had  
34 been incorporated in full into this article, except to the extent that  
35 any provision is either inconsistent with this article or is not  
36 relevant to this article.

37 (2) Any information, information sources, or enforcement  
38 remedies and capabilities available to the court or the state referring  
39 to the amount due described in subdivision (a) shall be available  
40 to the Franchise Tax Board to be used in conjunction with, or

1 independent of, the information, information sources, or remedies  
2 and capabilities available to the Franchise Tax Board for purposes  
3 of administering Part 10 (commencing with Section 17001), this  
4 part, Part 10.7 (commencing with Section 21001), or Part 11  
5 (commencing with Section 23001).

6 (e) The activities required to implement and administer this part  
7 shall not interfere with the primary mission of the Franchise Tax  
8 Board to administer Part 10 (commencing with Section 17001)  
9 and Part 11 (commencing with Section 23001).

10 (f) For amounts referred for collection under subdivision (a),  
11 interest shall accrue at the greater of the rate applicable to the  
12 amount due being collected or the rate provided under Section  
13 19521. When notice of the amount due includes interest and is  
14 mailed to the debtor and the amount is paid within 15 days after  
15 the date of notice, interest shall not be imposed for the period after  
16 the date of notice.

17 (g) A collection under this article is not a payment of income  
18 taxes imposed under Part 10 (commencing with Section 17001)  
19 or Part 11 (commencing with Section 23001).

20 *SEC. 5. Section 2.5 of this bill shall only become operative if*  
21 *both this bill and Senate Bill 419 of the 2013–14 Regular Session*  
22 *are enacted and become operative on or before January 1, 2015,*  
23 *in which case Section 2 of this bill shall not become operative.*